

EASTERN DISTRICT OF TEXAS

CIVIL ACTION NO. 1:18-CV-191

Defendants.

The defendants contend that because plaintiff did not respond to their motion for summary judgment, the court is required to accept the facts as stated in their motion as undisputed. However, the defendants fail to recognize that the plaintiff's version of events is drawn from his complaint which includes a declaration signed "under penalty of perjury [that] all facts presented

[therein] are true and correct.” Therefore, in considering the motion for summary judgment, the Magistrate Judge properly credited the complaint as competent summary judgment evidence. *See Leggett v. Lafayette*, 608 F. App’x 187, 190 (5th Cir. 2015) (citing *Ion v. Chevron USA, Inc.*, 731 F.3d 379, 382 n.2 (5th Cir. 2013); *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306-07 (5th Cir. 1988).

Here, genuine disputes of material fact exist regarding whether the force employed by the defendants was used in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm. Such genuine disputes of material fact preclude summary judgment. Therefore, the court overrules defendants’ objections.

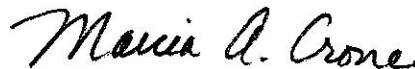
O R D E R

Accordingly, the defendants’ objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. It is

ORDERED that the defendants’ motion for summary judgment is **GRANTED**, in part, and plaintiff’s claims against them in their official capacities are **DISMISSED**. It is further

ORDERED that the defendants’ motion for summary judgment is **DENIED** in all other respects.

SIGNED at Beaumont, Texas, this 18th day of September, 2019.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE